

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION
DOCKET NO. 05-11682

L & T YACHT SALES, INC.,)
Plaintiff)
VS.)
)
POST MARINE CO., INC.,)
Defendant)
)

**STATEMENT OF MATERIAL FACTS PURSUANT TO RULE 56.1 IN SUPPORT
OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, L & T Yacht Sales, Inc. pursuant to Local Rule 56.1 states that the following material facts are not in dispute:

1. L & T Yacht Sales, Inc. ("L & T") is a Rhode Island corporation. *See* Complaint, 1. The Complaint is attached hereto as Exhibit A.
2. Todd J. Hamilton is the President of L & T. Deposition of Todd Hamilton, p. 6, ln. 16-18. Relevant excerpts from said transcript are attached hereto as Exhibit B.
3. Post Marine Co., Inc. ("Post") manufactured the boat the Relentless. *See*, Complaint 1 (Exhibit A).
4. That boat is the only assets of L & T. Deposition of Todd Hamilton, p. 7, ln. 10-15.
5. Post has experienced problems with series 953 gel coat manufactured by Cook Composite and Polymer used on boats manufactured by Post between 1997 and 2002. Deposition of Kenneth Jensen, p. 22. ln. 1-p. 23. ln. 14. Relevant excerpts from said transcript are attached hereto as Exhibit C.

6. Post first became aware of this problem in the summer of 2002. Deposition of Kenneth Jensen, p. 23, ln. 15-18.

7. By the fall of 2002 Post knew this was not an isolated problem. Deposition of Kenneth Jensen, p. 24, ln. 12-15.

8. The 953 series gel coat is defective. Deposition of Kenneth Jensen, p. 78, ln. 7-8.

9. Post has characterized the failure of the 953 gel coat as "catastrophic." Deposition of Kenneth Jensen, p. 65, ln. 17-20.

10. Post has characterized the problem as the "wholesale cracking" of the 953 gel coat. Deposition of Joseph Martorana, p. 12, ln. 19 - p. 13, ln. 1. Relevant excerpts from said transcript are attached hereto as Exhibit D.

11. Nevertheless, Post continued to use the 953 gel coat to perform repairs on boats until 2005. Deposition of Kenneth Jensen, p. 40 P. 41 ln. 41.

12. Post has now repaired approximately 15-18 boats with problems from the 953 gel coat. Deposition of Kenneth Jensen, p. 85, ln. 20-25.

13. Boats repaired using the 953 gel coat have experienced additional cracking in the repaired areas. Deposition of Kenneth Jensen, p. 41, ln. 13-18.

14. At least three of the other boats repaired by Post using additional 953 gel coat have already experienced further cracking. Deposition of Kenneth Jensen, p. 87, ln. 5-13.

15. As a result, Post no longer uses the 953 gel coat to perform repairs. Deposition of Joseph Martorana, p. 31, ln. 17 - p. 31, ln. 5.

16. Post now only uses another manufacturer's gel coat to perform repairs. Deposition of Joseph Martorana, p. 31, ln. 23-25.

17. L & T's boat was manufactured by Post in 2001 using the 953 gel coat. Deposition of Kenneth Jensen, p. 25, ln. 15- p. 26 ln. 5.

18. In May of 2004 Post was contacted about the defects with L & T's boat. Deposition of Kenneth Jensen, p. 26 ln. 6-16.

19. The cracking of the gel coat on L & T's boat was the same type of major cracking experienced by boats manufactured with the 953 gel coat. Deposition of Joseph Martorana, p. 34, ln. 15-21.

20. Before Post performed any repairs on L & T's boat, Todd Hamilton threatened to sue Post. Deposition of Todd Hamilton, p. 81, ln. 5-8

21. In August of 2004, Post agreed to repair the gel coat on the boat. *See*, letter of August 25, 2004 attached hereto as Exhibit E.

22. Post told Todd Hamilton, how it would repair the boat and estimated how long it would take. Deposition of Kenneth Jensen, p. 45, ln. 1-4.

23. Joseph Martorana clarified the letter of August 25, 2004 on September 2, 2004 by a further sent a letter to Todd Hamilton. This letter, Post states that the "[g]el coat will be removed from entire surfaces, examples being shelter sides, cockpit, forward deck, side decks, pulpit and hull to ensure consistency." *See*, September 2, 2004 letter, attached hereto as Exhibit F.

24. L & T brought the boat to Post for repairs in late October or early November of 2004. Deposition of Todd Hamilton, p. 32, ln. 18-21.

25. Post began working on L & T's boat in the winter of 2004. Deposition of Joseph Martorana, p. 16, ln. 18-25, p. 17, ln. 13-15.

26. Post did not strip the gel coat from the entire affected surfaces of the bottom of the boat, Deposition of Joseph Martorana, p. 19, ln. 11-15; the sides of the hull, p. 19, ln. 16-18; the bridge, p. 20, ln. 3-7; the interior of the bridge, p. 20, ln. 7-8; the hardtop p. 20, ln. 12-13; or, the bottom of the boat, p. 21, ln. 14 - pg. 22, ln. 16.

27. Post never stripped the hull, Deposition of Cortez Marks, p. 19, ln. 14-16; the back bulkhead, p. 20, ln. 7-8; the dashboard, p. 20, ln. 22-23; or the hardtop, p. 20, ln. 24-25. Relevant excerpts from said transcript are attached hereto as Exhibit B.

28. Post never removed any gel coat from the bottom of L & T's boat. Deposition of Cortez Marks, p. 19, ln. 20-23.

29. Post filled just the cracks on L & T's boat and sprayed and sanded over them. Deposition of Cortez Marks, p. 16, ln. 7-11.

30. Post no longer repairs boats in this manner. Now Post sands out all the cracks, rather than filling them in. Deposition of Cortez Marks, p. 18, ln. 8 - p. 19, ln. 3.

31. Post used more of the 953 gel coat to perform repairs to L & T's boat. Deposition of Joseph Martorana, p. 26, ln. 9-16.

32. When Mr. Hamilton removed the boat from Posts facility in August of 2005, there were many areas where the gel coat had not been repaired. Deposition of Todd Hamilton, p. 16, ln. 9-20.

33. After having L & T's boat for 9 ½ months, Post now said that it would not strip the bottom or hull of the boat. Deposition of Todd Hamilton, p. 26, ln. 4-21.

34. The 953 gel coat sprayed on by Post to perform repairs on L & T's boat has re-cracked. Deposition of Todd Hamilton, p. 33, ln. 7-10, p. 59, ln. 14-20.

35. Post has no express warranty for gel coat on its boats. Deposition of Kenneth Jensen, p. 80, ln. 9-10.

36. Post has sued the manufacturer of the gel coat in Federal District Court in New Jersey. Deposition of Kenneth Jensen, p. 82, ln. 7-9.

37. Post is suing the gel coat manufacturer for \$220,000 - \$225,000 for each of the 81 boats that it made using the 953 gel coat. Deposition of Kenneth Jensen, p. 85, ln. 10-19; p. 88, ln. 13-17.

Respectfully submitted,
The Plaintiff,
By its Attorneys,

/s/ John E. Zajac

John E. Zajac, Esquire BBO # 560195
Carmichael, Zajac & Fleury, P.C.
170 High Street
Taunton, MA 02780
(508) 821-2552

CERTIFICATE OF SERVICE

I, John E. Zajac, Esquire this 8th day of June, 2007 have given notice of the within Plaintiff's Motion for Partial Summary Judgment, Statement of Material Facts and Memorandum of Law, by mailing a copy of the same to by overnight mail to Defendant's legal counsel, Michel O. Weisz, Esquire at his 9350 S. Dixie Highway, Miami, Florida 33156 office and by e-mail service, via the Court's CM/ECF system which sent notification of such filing to Howard M. Brown, Esquire, Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th floor, Boston, MA 02110

/s/ John E. Zajac
John E. Zajac, Esquire

EXHIBIT

A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON DIVISION

DOCKET NO.

05-11682

L & T YACHT SALES, INC.,
Plaintiff

VS.

POST MARINE CO., INC.,
Defendant

RECEIPT # 66248
AMOUNT \$ 250.00
SUMMONS ISSUED 1
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 8/12/05

COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

MAGISTRATE JUDGE RBC

1. The Plaintiff, L & T YACHT SALES, INC., (hereinafter "L & T") is a duly organized Rhode Island corporation with a business address at 56 Ruggles Avenue, Newport, Rhode Island. L & T, is the registered owner of a 2001 50' yacht known as the "Relentless," (serial no. PMC 50076A101), manufactured by the Defendant, Post Marine Co., Inc. (the "boat").
2. Todd J. Hamilton of 1061 Brush Hill Road, Milton, Massachusetts ("Hamilton") is each officer and the sole director of L & T.
3. L & T and Hamilton usually docks and stores the boat in Hingham or New Bedford, Massachusetts.
4. The Defendant, Post Marine Co., Inc., (hereinafter "Post") is, upon information and belief, a duly organized New Jersey corporation with a principal place of business at 100 Post Road, Mays Landing, New Jersey.
5. Post advertises, sells yachts and does business throughout the United States, including the

Commonwealth of Massachusetts. Some of this is done through a network of eight (8) authorized Post dealers. Two (2) of the eight (8) authorized Post dealer locations are in the Commonwealth of Massachusetts.

JURISDICTION AND VENUE

6. Jurisdiction and venue are conferred upon this Court pursuant to Article III, Section 2 of the United States Constitution and 28 U.S.C § 1332 et seq.

FACTS COMMON TO ALL COUNTS

7. In May of 2004, while the boat was docked in Hingham, Massachusetts, Hamilton discovered a serious defect with the boat, in particular, the severe and extensive cracking and failure of its gel coat outer skin, as a result of design and /or manufacturing defects
8. Post confirmed this finding to Hamilton and was or became aware a similar defect of other yachts manufactured by Post.
9. Hamilton made Post aware that L & T had an existing bona fide offer to purchase the boat, but the amount offered was substantially diminished due to significant and widespread damage to the boat, which had become apparent to Hamilton in May of 2004.
10. At the time of this offer on the boat, L & T stood to lose, *inter alia*, in excess of one hundred thousand dollars (\$100,000.00) in the diminished resale value of the boat, as a result of the damage from the defect in the gel coat.
11. Post informed Hamilton that they were repairing the gel coat on the boats that were brought in by Post customers.
12. Post agreed to fix the gel coat problem on L & T's boat.
13. Hamilton inquired about the process that Post would undertake to repair the boat and about the level of care and workmanship that would go into Post's repair of the boat. Post directed

Hamilton to another Massachusetts Post owner to review the recent work performed by Post to this owner's particular boat.

14. Hamilton was very displeased with the work he viewed on this particular boat, noting that the defective gel coat was not removed, but instead only sanded down in certain spots and covered up with new gel coat. This method of repair was unacceptable to Hamilton. Therefore, Post agreed to completely replace the gel coat to the boat.
15. On September 2, 2004, five months following the initial discussions with Post, Mr. Joseph Matorana, Vice President of Post, provided Hamilton a letter agreeing to perform the necessary repairs, which specifically included agreeing to remove the gel coat from the entire surface to ensure consistency.
16. In addition, the parties also discussed in detail the overall standard care to be used by Post, so as to prevent over spray, dust in the engine or in the living quarters of the boat, etc. Post agreed to take the necessary measures to insure that the boat would be returned in the same, clean condition in which Hamilton would deliver it to Post.
17. On November 1, 2004, Hamilton drove the boat from Massachusetts to Post's facility in New Jersey for the agreed-to repairs. At the time Post took delivery of the boat for the repairs, Post indicated to Hamilton that the boat would be ready by May of 2005; in time for most of the 2005 boating season. Post was fully aware that Hamilton was attempting to sell the boat and had at least two potential buyers for it once the anticipated repairs were completed.
18. In February, Hamilton flew to Post to review the status of the work. At this time, very little work had been completed on the boat; however, Post continued to assure Hamilton that the repairs to the boat would be completed by May, as the parties had agreed.
19. In May of 2005, Hamilton once again flew to Post's facility in New Jersey, expecting to find

the boat close to complete. Hamilton inspected boat and noted and further indicated and provided in writing to Post a list of outstanding items, which were yet to be completed.

20. Post indicated to Hamilton that they had not yet begun work to replace the gel coat on the sides of the hull or the bottom of the hull and but again assured Hamilton that it would be completed as the parties had discussed and agreed. However, Post stated that the boat repairs would not be completed in May, but not until mid July 2005, just prior to Post closing down for a two-week vacation beginning on July 18, 2005. Once again Hamilton and L & T relied on Post's word.
21. The week of July 11, 2005, Hamilton contacted Post to let them know he would be down that week to pick up the boat before Post closed for vacation. Post indicated to Hamilton that the boat was indeed ready. Hamilton purchased a plane ticket, rented a car and got a hotel room, all at his expense, and took time out of his work schedule to go to the Post facility. For this trip however, he purchased only a one-way plane ticket based on Post's assurance that the boat was complete and he could drive it back to Massachusetts.
22. Upon Hamilton's arrival at Post on July 12, 2005, it was apparent that the repairs were not complete. The bottom of the boat had not even been touched and the sides of the boat still had cracks. It was also apparent to Hamilton that additional cracks were occurring on the boat and that, contrary to what the parties had agreed, Post failed to remove the defective gel coat and replace it.
23. Other portions of the boat were not in the same, clean condition as when Hamilton had delivered it from Massachusetts in November of 2004 and needed extensive cleaning or repair.
24. Hamilton requested in writing that Post not do any additional work on the sides or the bottom

of the boat until the parties could have further since Post clearly failed to remove the defective gel coat as the parties had agreed. Post failed to contact Hamilton before closing for its two week vacation.

25. After this two week vacation, Hamilton again traveled from Massachusetts to New Jersey and had the boat inspected by another yacht repair company, who concurred with Hamilton's findings that the boat was not repaired correctly.
26. The 2005 boating season has almost ended and the value of the boat has diminished significantly. L & T continues to pay insurance and carrying cost on a boat that he cannot use and cannot sell.
27. Post has now demanded that Hamilton remove the boat from its facility without performing any additional repairs or cleaning.

COUNT I: BREACH OF CONTRACT

28. The Plaintiff re-alleges paragraphs 1 through 26 of this Complaint as if set forth in full herein and incorporates the same by reference.
29. Post breached its contract with L & T by failing to repair the boat as promised and in a good and workmanlike and timely manner.
30. As a result of the actions of Post and its breach of contract, L & T has incurred substantial monetary damages including, but not limited to, a loss of the benefit of its bargain; the diminished value of the boat; the lost opportunity of sale; expenditures for travel, insurance and carrying costs while the boat was at Post's facility in New Jersey; and the anticipated future expense of proper repair and cleaning, and has otherwise been damaged.

WHEREFORE, the Plaintiff demands the relief as set forth below

COUNT II: FRAUDULENT MISREPRESENTATION

31. The Plaintiff re-alleges paragraphs 1 through 30 of this Complaint as if set forth in full herein and incorporates the same by reference.
32. In agreeing to provide said repairs to L & T's boat, Post, on numerous occasions falsely and fraudulently represented that Post was willing, ready and able to provide the repairs in a TIMELY, complete and workmanlike manner.
33. Those representations were false and in fact known to be false by Post at the time they were made. In truth and in fact, Post did not intend to provide the repairs in a quality, workmanlike manner as promised.
34. L & T relied on Post's false and misleading representations all to L & T's detriment.
35. As a result of L & T's reliance on Post's false and misleading representations L & T was financially damaged.

WHEREFORE, the Plaintiff demands the relief as set forth below.

COUNT III
NEGLIGENT MISREPRESENTATION

36. The Plaintiff re-alleges paragraphs 1 through 35 of this Complaint as if set forth in full herein and incorporates the same by reference.
37. In agreeing to provide the repairs to L & T's boat, Post negligently represented that it was willing, ready and able to provide the repairs in a TIMELY, complete and workmanlike manner, when it knew or should have known that it could not or would not perform as promised.
38. Post knew or reasonably should have known that the Plaintiff would rely on said promises and representations.

39. The Defendants had a duty to truthfully represent its ability and willingness to provide the repairs in a TIMELY, complete and workmanlike manner, as promised.
40. As a result of L & T's reliance on Post's misrepresentations, L & T has suffered substantial financial damages.

WHEREFORE, the Plaintiff demands the relief as set forth below.

COUNT IV: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

41. The Plaintiff re-alleges paragraphs 1 through 40 of this Complaint as if set forth in full herein and incorporates the same by reference.
42. Post is a merchant as that term is defined by the Uniform Commercial Code.
43. Post knew at the time of constructing the boat and its gel coat, its purchaser would rely on Post's skill and judgment in furnishing suitable products.
44. The boat and its gel coat were not suited for its particular purpose.

WHEREFORE, the Plaintiff demands the relief as set forth below.

COUNT V: NEGLIGENCE

45. The Plaintiff re-alleges paragraphs 1 through 44 of this Complaint as if set forth in full herein and incorporates the same by reference.
46. In undertaking to perform repairs to the boat, Post had a duty to L & T do so at a certain standard of care.
47. Post breached its duty to L & T, proximately causing damage to the boat and L & T.

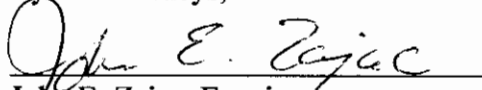
WHEREFORE, the Plaintiff demands the relief as set forth below.

RELIEF SOUGHT

- I. That a judgment for breach of contract be entered on Count I in favor of L & T with prejudgment interest from the date of breach;
- II. That a judgment based upon fraudulent misrepresentation stated be entered on Count II in favor of L & T with prejudgment interest;
- III. That a judgment for negligent misrepresentation be entered on Count III in favor of L & T with prejudgment interest;
- IV. That a judgment for breach of implied warranty be entered on Count IV in favor of L & T with prejudgment interest;
- V. That a judgment for negligence be entered on Count V in favor of L & T with prejudgment interest;
- VI. That the Court award the Plaintiffs costs and reasonable attorney's fees;
- VII. For further relief the Court deems just and proper.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully submitted,
The Plaintiff,
By its Attorneys,



John E. Zajac, Esquire
Carmichael & Zajac, P.C.
170 High Street
Taunton, MA 02780
(508) 821-2552
BBO No. 560195

Dated: August 12, 2005

EXHIBIT

B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-11682MLW

L & T YACHT SALES, INC.,
Plaintiff,

vs.

POST MARINE CO., INC.,
Defendant.

DEPOSITION OF TODD J. HAMILTON, taken pursuant to Notice under the applicable provisions of the Federal Rules of Civil Procedure on behalf of the Defendant, before Simonne J. Elwood, R.P.R. and a Notary Public in and for the Commonwealth of Massachusetts, at the office of Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th Floor, Boston, Massachusetts, commencing on Tuesday, April 17, 2007 at 9:57 a.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

APPEARANCES:

JOHN E. ZAJAC, ESQ.
CARMICHAEL & ZAJAC, P.C.
170 HIGH STREET
TAUNTON, MA 02780
REPRESENTS THE PLAINTIFF

MICHEL OCIACOVSKI WEISZ, ESQ.
SEGREDO & WEISZ
9350 SOUTH DIXIE HIGHWAY - SUITE 1500
MIAMI, FL 33156
REPRESENTS THE DEFENDANT

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T. HAMILTON

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties that all objections, except as to form, are reserved until the time of trial, including motions to strike.

It is further stipulated and agreed that the reading and signing of the deposition are not waived and to be read and signed under the pains and penalties of perjury.

It is further stipulated and agreed that the filing and sealing of the deposition are waived.

TODD J. HAMILTON

A witness called on behalf of the Defendant, having been satisfactorily identified by the production of his Massachusetts driver's license 022609789 and duly sworn, under oath, by the Court Reporter and Notary Public, was examined and testified as follows:

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T. HAMILTON

1 DIRECT EXAMINATION

2 Q (By Mr. Weisz) Good morning, Mr. Hamilton.
3 I'm going to assume that your lawyer has told
4 you what to expect at the deposition, so I
5 won't go through the ground rules; but if I
6 ask you something that you don't understand,
7 please let me know.

8 A Okay.

9 Q If you need a break, please let me know, and
10 we'll try to make this as, I guess, the least
11 uncomfortable as possible.

12 I'm going to show you -- Well, before
13 we do that, let me ask you, please, to state
14 your full name.

15 A Todd J. Hamilton.

16 Q And, Mr. Hamilton, what's your relationship
17 to L & T Yacht Sales, Inc.?

18 A President.

19 Q How long have you been the President?

20 A Since it was formed, I guess.

21 Q Okay. Do you know when it was formed?

22 A Not off the top of my head, I don't.

23 Q Do you have an estimate?

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T. HAMILTON

1 A Sometime in '03. I don't know the exact
2 month or date.

3 Q Okay. What was the purpose of forming L & T
4 Yacht Sales?

5 A Just I was advised by attorneys and an
6 accountant.

7 Q Was there a business purpose?

8 A No, just that's what they told me to do, so I
9 listened to them.

10 Q What is the business of L & T Yacht Sales?

11 A Just L & T Yacht Sales.

12 Q What does the company do?

13 A Bought a boat, and it's holding a boat.

14 Q Is that the only asset?

15 A Yes.

16 Q Does L & T Yacht Sales file tax returns?

17 A Yeah.

18 Q Does it have any income?

19 A I'd have to ask the accountant that one. I
20 don't even know. I don't handle any of the
21 tax stuff to be honest with you; I don't; the
22 accountant does.

23 Q Do you know who signs the tax return?

Vol. 1 - 16

T. HAMILTON

1 Q Okay. And then you took the boat away?

2 A Yeah. They put it in the water then, and
3 then I left.

4 Q So does that lead you to conclude that the
5 complaint was filed before you took the boat
6 out of Post?

7 A I'd be lying. I don't know the answer
8 whether it was or wasn't. I don't know.

9 Q Okay. All right. When you took the boat
10 from Post, were there any areas of gel coat
11 cracking that had not been fixed?

12 A Yes.

13 Q Which ones?

14 A The back deck, the stern, the port side, the
15 bottom, the hard top, the freezer, the sink
16 area in the back, the step area in the back,
17 the gunnels in the back, the dashboard and
18 the compass area and the bridge floor and the
19 opposite side of the port which I'm drawing a
20 blank for some reason, that side of the hull.

21 Q Okay. The back deck, is that on the top
22 sides or on the hull?

23 A It's when you walk in the boat, you step

Vol. 1 - 26

T. HAMILTON

1 A They wouldn't communicate with me when I
2 tried before I took the boat to get an answer
3 how we're going to fix the rest of it.
4 Q Did they ever tell you that they would not
5 fix the items that you claimed were
6 outstanding?
7 A Yes, they did.
8 Q Who told you that?
9 A Joe Martorana.
10 Q When did he tell you that?
11 A That was the week prior -- Let me think now.
12 That would be the week that I gave him the
13 letter of July 13th.
14 Q So he told you that before you gave him the
15 letter?
16 A Yes.
17 Q What did he say?
18 A That they would not be stripping the bottom;
19 they would not be stripping the hull; they
20 wouldn't be doing this; they wouldn't be
21 doing that.
22 Q So they wouldn't fix the boat the way you
23 wanted it, is that right?

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T. HAMILTON

1 A No, not the way I wanted, the way they said
2 they were going to.

3 Q How did they say they were going to fix it?

4 A They said they were going to strip the hull
5 and the cracked areas.

6 Q Okay. Were they going to strip the entire
7 hull or the areas where there were cracks?

8 A They said they were going to strip the hull,
9 deck, sides, the bottom.

10 Q Was there ever anything in writing that
11 indicated what Post was going to do?

12 A Yes.

13 Q Okay. What was there in writing?

14 A A letter from Joe Martorana to me.

15 Q Anything else?

16 A About the work they were going to do?

17 Q Yes.

18 A No, not about -- The only thing in writing
19 from them about work was the one letter, I
20 believe, except for the letter from you, of
21 course.

22 Q Okay. Do you think the letter from me
23 counts?

Vol. 1 - 32

T. HAMILTON

1 (Whereupon the Stenographer marked as
2 Exhibit No. 5 - Fax - To Mr. Hamilton from
3 Joseph Martorana.)

4 Q Do you recognize that letter? (Indicating)

5 A Yes, I do.

6 Q Do you know when that letter was sent?

7 A I do. I don't have it in front of me because
8 it's on the top.

9 Q Okay.

10 A But it's not -- You can't see it here, but
11 the original you can see the date and time it
12 was faxed. I believe it was in either
13 September or October of 2004.

14 Q Do you know whether that letter was sent
15 before you brought the boat to Post for
16 repairs?

17 A Yes, it was.

18 Q Okay. And when did you bring the boat to
19 Post for repairs?

20 A I believe it was the end of October or
21 November 1st, somewhere in there.

22 Q Did you ever pay Post anything to repair the
23 boat?

Vol. 1 - 33

T. HAMILTON

1 A Nope.

2 Q Do you know what the value of the work was
3 that Post performed on the boat?

4 A The value that Post did?

5 Q Yes.

6 A Zero.

7 Q Okay. And why do you say that?

8 A Because they sprayed gel coat over gel coat
9 that's re-cracking so now it's double the work
10 to take it off.

11 Q How do you know that's what they did?

12 A When you're sanding it off, you could see
13 three layers; it was so thick.

14 Q And --

15 A Three different colors.

16 Q Okay. Is this something that you have
17 observed yourself?

18 A Yes.

19 Q And how do you know it's three layers of gel
20 coat?

21 A Three different colors.

22 Q What does that mean; why does that mean three
23 different --

COPY

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T. HAMILTON

C E R T I F I C A T E

I, Simonne J. Elwood, R.P.R. and a Notary Public within and for the Commonwealth of Massachusetts, duly commissioned, qualified and authorized to administer oaths and to take and certify depositions, do hereby certify that heretofore, to wit, on the 17th day of April 2007, personally appeared before me Todd J. Hamilton, at the office of Bartlett Hackett Feinberg P.C., 155 Federal Street, 9th Floor, Boston, Massachusetts, in the aforecaptioned cause pending in the United States District Court for the District of Massachusetts; that the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth; that thereupon and while said witness was under oath, the within deposition was taken down by me in shorthand at the time and place herein named and was thereafter reduced to computer transcription under my supervision. I further certify that I am not interested in the event of the action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my seal of office this 30th day of April, 2007.



Simonne J. Elwood
REGISTERED PROFESSIONAL REPORTER

My Commission Expires: February 14, 2008

EXHIBIT

C

ORIGINAL

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 BOSTON DIVISION
4 C.A. NO. 05-11682 MLW
5

6 L & T YACHT SALES, INC., :
7 Plaintiff, :
8 -vs- :
9 POST MARINE CO., INC., :
10 Defendant. :
11 - - - - -
12
13

14 DEPOSITION OF: KENNETH JENSEN
15 WEDNESDAY, APRIL 11, 2007
16
17
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20 Atlantic City Court Reporting, LLC.
21 Certified Shorthand Reporters & Videographers
22 1125 Atlantic Avenue - Suite 416
23 Atlantic City, New Jersey 08401
24 (609) 345-8448
25 www.accourtreporting.com

(JENSEN - ZAJAC)

1 Deposition of KENNETH JENSEN, taken in the
2 above-entitled matter before Betty Ann Wasilewski, a
3 Certified Shorthand Reporter, License No. XI01032,
4 Registered Professional Reporter, Certificate of Merit
5 Holder and Notary Public of the State of New Jersey,
6 taken at the offices of ATLANTIC CITY COURT REPORTING,
7 LLC., 1125 Atlantic Avenue, Suite 416, Atlantic City,
8 New Jersey 08401, on Wednesday, April 11, 2007,
9 commencing at 10:06 a.m.

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(JENSEN - ZAJAC)

1 A P P E A R A N C E S:

2
3 CARMICHAEL & ZAJAC, P.C.

4 BY: JOHN E. ZAJAC, ESQ.

5 170 High Street

6 Taunton, Massachusetts 02780

7 (508) 821-2552

8 For the Plaintiff.

9
10 SEGREDO & WEISZ

11 BY: MICHEL O. WEISZ, ESQ.

12 9350 South Dixie Highway

13 Suite 1500

14 Miami, Florida 33156

15 (305) 670-3820

16 For the Defendant.

17
18 ALSO PRESENT:

19 Todd Hamilton

(JENSEN - ZAJAC)

1 K E N N E T H J E N S E N,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ZAJAC:

5 Q. Good morning, Mr. Jensen.

6 A. Good morning.

7 Q. My name is John Zajac, and as I'm sure
8 you know, I represent L & T Yacht Sales, Incorporated,
9 the plaintiff, in an action in the Massachusetts
10 Federal District Court against Post Marine Company.

11 We are here today to take your
12 deposition, and I believe you have been deposed
13 before.

14 A. Yes, I have.

15 Q. So I'm going to briefly go over the
16 rules with you, but I assume that having been through
17 this process before, you're pretty familiar with what
18 they are. We're here to take your deposition, which
19 is that I'm going to ask you questions and you're
20 going to answer them.

21 If you need to take a break for any
22 reason, we can certainly do that. I would simply ask
23 that if there is a question before you, that you
24 answer that question before we take any type of break.

25 If you don't understand my question,

(JENSEN - ZAJAC)

1 Q. Mr. Jensen, has Post had problems with
2 the gel coating on boats in the past 10 years?

3 A. With one particular series, yes.

4 Q. When you say "series," what do you mean?

5 A. One series of gel coat.

6 Q. And is there a designation assigned to
7 that series of gel coat?

8 A. Yes.

9 Q. It's -- what is that designation?

10 A. It's CCP's 953 series.

11 Q. Who is CCP?

12 A. * cook, Composite and Polymers.

13 Q. When did Post begin using the 953 gel
14 coat?

15 A. Fall of '97.

16 Q. Did it use that -- did it use 953 gel
17 coat on all sizes of boats that it manufactured?

18 A. Yes.

19 Q. Did it use any other gel coat besides
20 the 953 between 1997 and 2004?

21 A. Yes.

22 Q. What other gel coats has Post used
23 besides the 953 gel coat since 1997?

24 A. Early in '97 we used the CCP 952 gel
25 coat, and then late 2002 we started using the

(JENSEN - ZAJAC)

1 Interplastic's gel coat.

2 Q. Did Post exclusively use the
3 Interplastic's gel coat for all new boats manufactured
4 after 2002?

5 A. Talking calendar year 2002, yes.

6 Q. So for boats that were manufactured as
7 opposed to repaired, the 953 gel coat was only used
8 between 1997 and 2002?

9 A. Yeah. Realize calendar year 2002 would
10 encompass some 2003 model boats, yes.

11 Q. And is the 953 gel coat the only one in
12 which Post has experienced significant problems with
13 cracking?

14 A. Yes.

15 Q. When did Post first become aware of a
16 problem with cracking with the 953 gel coat?

17 A. First time we saw it was in the summer
18 of 2002.

19 Q. And how did you become aware of that
20 problem?

21 A. A customer asked us if we would look at
22 his boat, if we, you know -- take care of some cracks
23 in it so he brought it down, and we took care of it.

24 Q. What was the hull number of that boat?

25 A. I believe it was 52.

(JENSEN - ZAJAC)

1 Q. And what size?

2 A. 50-foot.

3 Q. When was that boat manufactured?

4 A. 1998.

5 Q. What type of problems did the owner of
6 that boat encounter?

7 A. Just some unusual indiscriminate
8 cracking.

9 Q. And in 2002, was the person who brought
10 it to you the original owner of the boat?

11 A. Yes.

12 Q. When did Post become aware that this was
13 not an isolated problem with Boat 50-52?

14 A. In the fall of 2002, we saw a second
15 boat.

16 Q. What was the hull number of that boat?

17 A. Number 60. 50, Number 60.

18 Q. And did that boat have the same problems
19 as 50-52?

20 A. Similar.

21 Q. When was 60 manufactured?

22 A. '98, '99. I'm not sure.

23 Q. In the time line of Post becoming aware
24 of these problems, what happened next?

25 A. What do you mean?

(JENSEN - ZAJAC)

1 Q. Well, as of the fall of 2002, Post has
2 become aware of problems with two boats. When did
3 Post become aware of more problems than that?

4 A. I'm going to say in '03. I don't have
5 specifics.

6 Q. How did Post become aware of further
7 problems with cracking of gel coat?

8 A. Typically, a customer would call us up
9 seeing something unusual.

10 Q. So by 2003, how many such calls had Post
11 received?

12 A. It really wasn't too many initially. I
13 can't tell you exactly, but it wasn't -- it wasn't
14 that many.

15 Q. What is the hull number of Mr.
16 Hamilton's boat or L & T Yacht Sales' boat?

17 A. 50-076.

18 Q. And when was that boat manufactured?

19 A. I believe 2001. Excuse me. Let me
20 backtrack on that, okay? Manufacturing is a lengthy
21 time. The boat would have been started in 2000,
22 completed -- it was completed, I believe, in January
23 of '01.

24 Q. What's the normal time frame for the
25 manufacture of a 50-foot Post boat?

(JENSEN - ZAJAC)

1 A. Approximately four months. Four,
2 four-and-a-half months.

3 Q. And the 953 gel coat would have been the
4 type of gel coat used on Number 76?

5 A. Yes.

6 Q. Did someone contact you about a problem
7 with cracking of the gel coat on Boat 76?

8 A. Yes.

9 Q. Who contacted you?

10 A. Mr. Hamilton.

11 Q. And did he speak with you directly about
12 it?

13 A. Yes.

14 Q. When were you first contacted by Mr.
15 Hamilton about that boat?

16 A. I believe it was in May of '04.

17 Q. How did he first contact you?

18 A. Telephone.

19 Q. And what did he say to you?

20 A. Just said he was experiencing some
21 unusual, odd cracking, and we told him what we had
22 experienced.

23 Q. What did you tell him?

24 A. Just that we were seeing in some -- on
25 some boats an unusual type of gel coat cracking.

(JENSEN - ZAJAC)

1 Q. And is Post paying for that?

2 A. We're paying for part of it.

3 Q. Would those repairs require the removal
4 of a substantial amount of gel coat?

5 A. It would require the remove of some gel
6 coat. Yes.

7 Q. How much?

8 A. They need to -- let me backtrack just
9 one second. At the time that Mr. Mobarri's boat was
10 repaired, it was repair using 953 gel coat, okay? Mr.
11 Hamilton's boat was not repaired with 953 gel coat.
12 So the 953 gel coat on Mr. Mobarri's boat suffered a
13 second failure, okay? The boat is being sanded -- you
14 know, is to be sanded aggressively.

15 The people at Onset Bay felt they knew
16 how far they had to take it down and then it was going
17 to be Awl Grippped.

18 Q. And is it still at Onset Bay Marina for
19 repairs?

20 A. I'm not sure.

21 Q. For a period of time did Post use the
22 953 gel coat to perform repairs?

23 A. Yes.

24 Q. And during what period of time did Post
25 use 953 gel coat to perform repairs?

(JENSEN - ZAJAC)

1 A. Up until either late 2004 or early 2005.

2 Q. And what was the reason that Post
3 initially used 953 gel coat to perform those repairs?

4 A. The -- we had the people from CCP come
5 in and, you know, look at what was going on. They
6 assured us their product was good. They assured us
7 that, you know, how we were fixing the boats, that we
8 wouldn't have further problems.

9 Q. When did those conversations take place?

10 A. They took place during '04, '02 when
11 they came in. I'm not sure if we ever had them visit
12 us during '03.

13 Q. And subsequently did the repairs using
14 the 953 gel coat experience the same problems as?

15 A. Some did. Some haven't.

16 Q. Is that why Post no longer uses 953 gel
17 coat for repairs?

18 A. Yes.

19 Q. Do you know if Bill Catauro also went to
20 view Mr. Mobarri's boat?

21 A. He may have.

22 Q. For the second repairs done to Mr.
23 Mobarri's boat, were they only to fix the first
24 repairs or was there continued cracking in the other
25 areas that had not been repaired?

(JENSEN - ZAJAC)

1 Q. Did Post ever advise Mr. Hamilton in
2 writing as to how the repairs to his boat would be
3 done?

4 A. I believe we did.

5 Q. And do you know who prepared that?

6 A. I know that our attorney -- we prepared
7 an in-house memo, went to our attorney. He forwarded
8 a letter and then Joe Martorana sent a follow-up
9 letter.

10 Q. Did Mr. Hamilton indicate that he was
11 going to use that letter to show to any subsequent
12 purchaser or purchasers?

13 A. Not that I recall.

14 Q. Did Mr. Hamilton express any concerns as
15 to the type of repairs that Post stated in that
16 letter?

17 A. Well, I know in the first letter he
18 wanted a little clarification, and then Joe sent that
19 second letter.

20 Q. If you recall, what were those
21 clarifications?

22 A. I don't recall.

23 Q. At any time did Post ever offer a cash
24 settlement, rather than repairs to Mr. Hamilton's
25 boat?

(JENSEN - ZAJAC)

1 A. Telephone.

2 Q. When did Post first begin notifying
3 dealers with problems with the gel coat?

4 A. Well, some of them knew because some of
5 them had their clients suffer that issue. The only
6 people who weren't aware of it were the people in
7 Florida, and, I don't know, a couple years.

8 Q. Is it a fair statement to characterize
9 the cracking of the 953 gel coat on Post boats a major
10 problem?

11 A. It's not a structural issue. It's not a
12 major problem with the boat. It's a cosmetic issue,
13 which is labor intensive to repair, and it's expensive
14 to repair, but it is not a major problem in that it
15 prohibits a customer from utilizing the boat and
16 there's no safety issue involved in this problem.

17 Q. Has Post ever referred to the gel coat
18 failure as being catastrophic?

19 A. Yes, in the context of the gel coat, not
20 in the context of the boat.

21 Q. Does the gel coat failure diminish the
22 value of a boat?

23 A. It makes it unsightly and that's in the
24 eye of the beholder. We've had people buy boats that
25 had this problem and it did not affect them buying the

(JENSEN - ZAJAC)

1 Oyster Harbor as a dealer. We had gone a few years
2 without a dealer and then later -- and then
3 probably -- I'm ball parking this, probably around
4 '97, we had Oyster Harbor as a dealer and they were a
5 dealer with us until '04-'05, in that time frame.

6 BY MR. ZAJAC:

7 Q. Is the 953 gel coat defective?

8 A. In our opinion it is, yes.

9 Q. Is it necessary to replace all the 953
10 gel coat on a boat?

11 A. No. We're not seeing failure in all
12 areas. We believe there is certain environmental
13 issues that will affect it on certain areas of the
14 boat quicker or --

15 MR. WEISZ: At which we are not going to
16 discuss in this deposition.

17 THE WITNESS: Yeah.

18 MR. WEISZ: That's subject of expert
19 testimony that hasn't been disclosed yet.

20 BY MR. ZAJAC:

21 Q. Is there anything that can be done
22 besides removal and replacing of the 953 gel coat to
23 prevent it from failing?

24 MR. WEISZ: Hang on one second. If you
25 ask the question in the sense of repairing the cracks,

(JENSEN - ZAJAC)

1 BY MR. ZAJAC:

2 Q. At the time that -- strike that.

3 In July of 2005, were there any areas of
4 Mr. Hamilton's boat that still needed to be stripped?

5 A. There were -- again, I believe there
6 were a few cracks on the hull that we were going to
7 address, and we were going to remove the bottom paint
8 and inspect the bottom.

9 Q. Does Post warranty gel coat?

10 A. No.

11 Q. Does Post offer any type of warranty on
12 its boats?

13 A. Yes.

14 Q. How long is that warranty?

15 A. At the time that Mr. Hamilton's boat was
16 built, it was one year.

17 Q. Does Post's warranty extend to anyone
18 beyond the original purchaser of the boat?

19 A. No.

20 Q. Is it Post's contention that if a boat
21 is sold one year -- resold within one year that the
22 warranty then expires?

23 A. Yes.

24 Q. Is it Post's contention that there is no
25 warranty applicable to Mr. Hamilton's boat?

(JENSEN - ZAJAC)

1 Q. Did anyone besides Mr. Zappy (ph) and
2 L & T Yacht Sales, Incorporated own Number 76?

3 A. To my knowledge, no. Excuse me. With
4 the exception of Portland Boat Works who was the
5 stocking dealer. I don't believe that there was a Mr.
6 Zappy (ph) to somebody else. I don't know the chain.

7 Q. Post has brought a claim against the
8 manufacturer of the gel coat, correct?

9 A. Yes.

10 Q. And there's litigation pending in New
11 Jersey Federal District Court concerning that matter?

12 A. Yes.

13 Q. And Viking Yacht is also a party to that
14 case?

15 A. Yes.

16 Q. Is it Post's contention in the
17 litigation in New Jersey that it has a warranty from
18 manufacturer of the 953 gel coat?

19 MR. WEISZ: Object. Calls for a legal
20 conclusion. If you care to review the pleadings,
21 you'll see what the claims are.

22 MR. ZAJAC: I think he can answer that.
23 I don't think that requires a conclusion -- a legal
24 conclusion.

25 MR. WEISZ: Well --

(JENSEN - ZAJAC)

1 MR. WEISZ: If you want to go off the
2 record for a second.

3 MR. ZAJAC: Sure.

4 (Discussion off the record.)

5 BY MR. ZAJAC:

6 Q. Does Post contend that it had any
7 implied warranty from the gel coat manufacturer?

8 A. I don't want to sound dumb, okay, but
9 I'm not -- I don't want to say. I don't know.

10 Q. In its claim for damages -- strike that.
11 What is the claim for damages that Post
12 is making against the manufacturer of the gel coat?

13 A. We have -- we have -- we have the boats
14 that we've repaired, the cost on those, and then we're
15 also trying to cover all the boats that were
16 manufactured with 953 gel coat.

17 Q. And how many boats were manufactured
18 with 953 gel coat?

19 A. 81.

20 Q. How many have been repaired to date?

21 A. 81 have not had a problem, okay?

22 Q. Uh-huh.

23 A. Of those repaired, without counting, I'm
24 goes to guess we're probably somewhere up between 15
25 and 18. I'm guessing. It's ballpark.

(JENSEN - ZAJAC)

1 three years ago with 953 gel coat.

2 Q. How many boats have been repaired once
3 with 953 gel coat and have not required further
4 repair?

5 A. Probably eight or nine.

6 Q. And how many have been repaired with 953
7 gel coat and have required further repairs?

8 MR. WEISZ: I'm going to object to the
9 form, but you can go ahead and answer it.

10 THE WITNESS: Okay. I know of two for
11 sure. Three. Three for sure. Two have -- well, two
12 are in process. One was done and there's maybe a
13 couple of others.

14 BY MR. ZAJAC:

15 Q. Besides Mr. Brown's former boat, the
16 50-footer, are there any other boats in which Post has
17 obtained a release without performing any repairs or
18 paying for a third-party to perform repairs?

19 A. No.

20 Q. Is there any litigation pending against
21 Post from an owner besides Mr. Hamilton?

22 A. No.

23 Q. Have there previously been any
24 litigation against Post from a -- by a former -- by an
25 owner besides Mr. Hamilton?

(JENSEN - ZAJAC)

1 A. No. Post has been in business for 50
2 years. Mr. Hamilton is the first person to sue Post
3 in 50 years, and the lawsuit that Post is bringing
4 against CCP is the first lawsuit that I'm aware of in
5 50 years.

6 Post has always been a company that has
7 tried to accommodate customers, take care of their
8 product and not get involved in these issues.

9 Q. With regard to its claim against the gel
10 coat manufacturer, has Post quantified its damages for
11 the boats that have not yet been repaired, nor the gel
12 coat has failed?

13 A. We've put a number out there, which is
14 an average of time.

15 Q. What is that number?

16 A. I'm trying to remember. I believe it
17 was like 220, 225, 225,000, the boat. I think.

18 Q. Is Post seeking damages above and beyond
19 its cost of repair for boats that have already been
20 repaired once using the 953 gel coat?

21 A. We've notified them that those boats --
22 what boats were repaired with 953 gel coat, and we
23 notified them that those boats may crack again in the
24 future based on what we've seen over the years, so
25 they've been notified of that.


(JENSEN - ZAJAC)

C E R T I F I C A T I O N

I, BETTY ANN WASILEWSKI, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, KENNETH JENSEN was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.



BETTY ANN WASILEWSKI
Certified Shorthand Reporter
License No. XI01032
Certificate of Merit
Registered Professional Reporter
My Commission expires 12/18/08

DATED: April 28, 2007.

THIS TRANSCRIPT FORMAT COMPLIES WITH NJ ADC 13:43-5.9.

EXHIBIT

D

ORIGINAL

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 BOSTON DIVISION

4 C.A. NO. 05-11682 MLW

5
6 L & T YACHT SALES, INC., :

7 Plaintiff, :

8 -vs- :

9 POST MARINE CO., INC., :

10 Defendant. :

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14 DEPOSITION OF: JOSEPH MARTORANA

15 WEDNESDAY, APRIL 11, 2007

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19 Atlantic City Court Reporting, LLC.

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1 Deposition of JOSEPH MARTORANA, taken in the
2 above-entitled matter before Betty Ann Wasilewski, a
3 Certified Shorthand Reporter, License No. XI01032,
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5 Holder and Notary Public of the State of New Jersey,
6 taken at the offices of ATLANTIC CITY COURT REPORTING,
7 LLC., 1125 Atlantic Avenue, Suite 416, Atlantic City,
8 New Jersey 08401, on Wednesday, April 11, 2007,
9 commencing at 2:14 p.m.

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1 A P P E A R A N C E S:

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3 CARMICHAEL & ZAJAC, P.C.

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11 BY: MICHEL O. WEISZ, ESQ.

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13 Suite 1500

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15 (305) 670-3820

16 For the Defendant.

17
18 ALSO PRESENT:

19 Todd Hamilton
20
21
22
23
24
25

(MARTORANA - ZAJAC)

1 J O S E P H M A R T O R A N A,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ZAJAC:

5 Q. Good afternoon, Mr. Martorana.

6 A. Good afternoon.

7 Q. How are you? My name is John Zajac and
8 I represent L & T Yacht Sales, Incorporated in
9 litigation in the federal district court against Post
10 Marine Company, Incorporated.

11 Have you ever given a deposition before?

12 A. Yes, I have.

13 Q. I'm going to assume that you're
14 relatively familiar with the ground rules, but I'm
15 going to state them very briefly, which is that we're
16 here to record your testimony, and I'm going to ask
17 you questions, and you're going to answer them; that
18 it's important that you answer verbally with yes or no
19 if that's the appropriate answer and not uh-huh or
20 uh-uh because that doesn't form a transcript or
21 nodding your head or indicating something, other than
22 verbally.

23 If you don't understand my questions,
24 please feel free to ask me to rephrase them or to
25 explain anything so that you are clear in what I'm

(MARTORANA - ZAJAC)

1 A. I thought it had better flexible
2 properties to it, and it was better -- it was priced
3 better. It was cheaper to be honest with you.

4 Q. Had Post already been receiving
5 complaints about boats with the 953 gel coat at that
6 time?

7 A. At what -- in 19 -- in 2002?

8 Q. Yes.

9 A. We had some boats, yes, but not -- yeah,
10 we did have some boats. Yes, I believe.

11 Q. Was it the complaints or was it the
12 better performance characteristics of the
13 Interplastic's at that time that made you select
14 Interplastic's over the 953?

15 A. It was my suspicion of the
16 characteristics of 953 and the better pricing of the
17 other gel coat and the better characteristics of the
18 other gel coat.

19 Q. Did you begin testing comparing the 953
20 to Interplastic's before or after Post received its
21 first complaint about cracking in the 953 gel coat?

22 A. I'm not sure of that. At the time, and
23 I'm talking about in 2000 -- the end of 2001, 2002, I
24 don't believe there was any type of -- there was no
25 wholesale cracking or problems that we had been aware

(MARTORANA - ZAJAC)

1 at that time, but I don't think we had any -- I don't
2 think we had any -- any kind of conversations before
3 that that I can remember.

4 Q. So did you have any involvement with
5 regard to Mr. Hamilton's boat before it actually
6 arrived at Post?

7 A. What -- what do you mean? I'm not sure
8 I understand the question.

9 Q. Did you speak with Ken about it? Did
10 you speak to --

11 A. Yes, I did.

12 Q. -- anyone about it?

13 A. Yes, I did.

14 Q. What did Ken tell you about it?

15 A. That it was a boat that we were going to
16 repair, and we talked about, you know, when we could
17 bring it in, and when we could get it done.

18 Q. And what did you discuss with Ken about
19 a time frame for repairing Mr. Hamilton's boat?

20 A. I believe the boat -- we brought the
21 boat in in November and we were going to work on it
22 over the winter.

23 Q. Did you work on Mr. Hamilton's boat over
24 the winter of 2004 into 2005?

25 A. Yes.

(MARTORANA - ZAJAC)

1 Q. What was the condition of the gel coat
2 on Mr. Hamilton's boat when you first saw it?

3 A. The overall condition of the boat, I
4 thought, was good. It looked like it was maintained.
5 There were areas that were cracking, though. I saw
6 the stress cracking.

7 Q. Okay. What areas did you first see
8 cracking in Mr. Hamilton's boat when you took it in
9 for repairs?

10 A. On the shelter sides, the front deck,
11 the windshield, the cockpit floor, I believe the
12 cockpit side decks.

13 Q. When did work on Mr. Hamilton's boat
14 start?

15 A. In November.

16 Q. Was that right when it first came in?

17 A. Yes.

18 Q. Where at your facility was the work
19 being performed?

20 A. In our production building.

21 Q. Were there other boats being repaired at
22 the same time?

23 A. In the building?

24 Q. Yes.

25 A. No, I don't believe so.

(MARTORANA - ZAJAC)

1 A. Most of them, yes, I do recall.

2 Q. What were they?

3 A. The shelter sides, the windshield, the
4 front deck, the cockpit, the cockpit side decks. I
5 don't remember if the back bulkhead -- if we did work
6 to the back bulkhead or not or the tackle lockers.

7 There was, I believe, one or two cracks
8 on one side of the hull and on the other side, I
9 believe, there was a couple small cracks around the
10 vents.

11 Q. Did you have to strip the bottom of the
12 boat?

13 A. Did we strip the bottom?

14 Q. Yes.

15 A. No, we didn't.

16 Q. Did you strip the sides of the hull?

17 A. Did I completely strip the sides? No, I
18 did not.

19 Q. What of the hull was stripped?

20 A. The areas that were affected.

21 Q. How large were those areas?

22 A. On the side that we saw a couple cracks,
23 they were running top to bottom, and there was
24 probably two or three areas that we worked on there.

25 On the other side in the vent area, I

(MARTORANA - ZAJAC)

1 believe, there were small -- there were spots -- small
2 spots around the radiuses of the vents.

3 Q. Did you have to strip the exterior of
4 the bridge?

5 A. Exterior of the bridge? No. We didn't
6 see any cracking on the exterior.

7 Q. Did you strip the inside of the bridge?

8 A. No, we didn't.

9 Q. Did you strip the floor of the bridge?

10 A. I'm not sure. They might have. I'm not
11 sure.

12 Q. Did you strip the hardtop?

13 A. No, we did not. I don't believe we did.

14 Q. While the boat was at Post for repair,
15 did Mr. Hamilton ever come and visit Post?

16 A. I believe he was, yes.

17 Q. Did he meet with you on any of those
18 occasions?

19 A. I talked to him there, yes. He had been
20 there.

21 Q. Do you recall how many separate
22 occasions you met with Mr. Hamilton at Post during the
23 repairs of the boat?

24 A. No, I don't recall how many. It might
25 have been one or two.

(MARTORANA - ZAJAC)

1 Q. Do you recall when the first time was
2 that you met with Mr. Hamilton at Post?

3 A. No, I don't.

4 Q. Do you recall any conversations that you
5 had with him when you met with him?

6 A. I recall conversations about stripping
7 the bottom, yeah, because we had talked about him
8 sending us down some stripper, some solution to take
9 the bottom paint off.

10 Q. And did he send that to you?

11 A. Yes, he did.

12 Q. What was the reason that he provided the
13 stripper?

14 A. He had said he had a solution that would
15 take the bottom paint off pretty readily.

16 Q. Did you use it?

17 A. We tried.

18 Q. Did it work?

19 A. No, it didn't.

20 Q. What was the problem with it?

21 A. I don't know. I don't think it works.
22 We initially tried it with a pressure washer and it
23 didn't work, and then I think Todd suggested that we
24 had to use a hot water pressure washer or something
25 that generated heat so we rented a machine that

(MARTORANA - ZAJAC)

1 coat on a boat?

2 A. Yes.

3 Q. What is it?

4 A. Different manufacturers different gel
5 coats, it will vary, but around 20 mils is an average.

6 Q. And do you know how thick the gel coat
7 on Mr. Hamilton's boat was?

8 A. No, I don't.

9 Q. What type of gel coat were you using for
10 the repairs of Mr. Hamilton's boat?

11 A. We were using -- I believe we used
12 Interplastic's on his house sides. Everything above
13 the rub rail and on the hull side, I believe we used
14 953.

15 Q. What would be the reason that you used
16 the 953 on the hull side?

17 A. Because it blended very well.

18 Q. Because it was already 953 --

19 A. Yes.

20 Q. -- on the boat?

21 A. Uh-huh.

22 Q. Could you apply the Interplastic's gel
23 coat over the 953 gel coat?

24 A. Yes.

25 Q. So there was some areas that didn't have

(MARTORANA - ZAJAC)

1 you needed the space in the production facility?

2 A. No. They're not related. The
3 production facility is inside. The water has three
4 slips out there or four slips out there.

5 Q. Did Post deliver a brand new 53-foot
6 boat in July of 2005?

7 A. I don't know.

8 Q. Do you know what the total number of
9 hours expended on the repair of Mr. Hamilton's boat
10 was?

11 A. Yeah. I believe you asked me that
12 before. It was somewhere around 2,200 hours. I don't
13 know the exact number.

14 Q. And do you know the total cost of the
15 repairs?

16 A. Personally, no.

17 Q. Was there some period of time that Post
18 was used -- continuing to use 953 gel coat to repair
19 the boats manufactured with 953 gel coat?

20 A. Yes, there was.

21 Q. When was that?

22 A. Exact time frame, I don't know. 2003
23 possibly. 2002, 2003.

24 Q. And there was both 953 gel coat and
25 Interplastic's gel coat used in the repairs of Mr.

(MARTORANA - ZAJAC)

1 Q. Is CCP's 953 gel coat defective?

2 A. I don't know that. I'm not a chemist.
3 I believe -- I suspect something's wrong.

4 Q. And, generally, has it been boats kept
5 in cold climates that have had this cracking problem?

6 A. Yes.

7 Q. Has it happened to any boat that's not
8 kept in a cold climate yet?

9 A. I think there's one boat that I know of
10 that, and I haven't seen it so I can't attest to if
11 it's a normal gel coat crack, you know, because gel
12 coat does crack after a certain amount of time, you
13 know, it raises and all, or it's the type of cracking
14 we've seen on some of the boats we've repaired.

15 Q. And is it fair to say that the cracking
16 on Mr. Hamilton's boat is the typical kind of major
17 cracking you've seen on boats with 953 gel coat kept
18 in colder climates?

19 A. In some areas it was, yes.

20 Q. Which areas?

21 A. The areas that we repaired.

22 MR. ZAJAC: If we could take a short
23 break, I'm probably done.

24 MR. WEISZ: Whatever you want.

25 MR. ZAJAC: I don't have too much

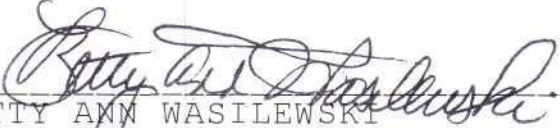
(MARTORANA - ZAJAC)

C E R T I F I C A T I O N

I, BETTY ANN WASILEWSKI, a Certified Shorthand Reporter of the State of New Jersey, do hereby certify that prior to the commencement of the examination, JOSEPH MARTORANA was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.


BETTY ANN WASILEWSKI
Certified Shorthand Reporter
License No. XI01032
Certificate of Merit
Registered Professional Reporter
My Commission expires 12/18/08

DATED: April 29, 2007.

THIS TRANSCRIPT FORMAT COMPLIES WITH NJ ADC 13:43-5.9.

EXHIBIT

E

SEGREDO & WEISZ

ATTORNEYS AT LAW

A Partnership Including Professional Associations

Michel O. Weisz, P.A.
Frank J. Segredo, P.A.

Suite 1500
9350 South Dixie Highway
Miami, Florida 33156
Telephone: (305) 670-3820
Facsimile: (305) 670-8230

FAXED
August 25, 2004

Delivered Via Fax
(617) 333-3203

Ms. Lisa A. Kane
77 Rocsam Park Road
Braintree, MA 02184

Re: Post Marine/Todd Hamilton

Dear Ms. Kane:

I have reviewed various items of correspondence concerning a Post yacht owned by your husband, Todd Hamilton. It is my understanding that your husband purchased the yacht in a used condition sometime in the early summer of 2003. The yacht is a 2001 model year vessel which had been sold by a Post dealer at retail to the original purchaser in early to mid 2001.

As you may be aware, all Post yachts are covered by a written limited warranty. The warranty in effect at the time the yacht was originally sold was for one year from date of sale. Thus the warranty expired well before your husband purchased the yacht. In addition, the warranty expressly disclaims coverage of gel coat. As I understand it, the current issues related to the yacht concern gel coat issues, which in my view are not covered by the warranty and for which Post Marine has no liability or duty.

Having said that, Post is willing as a matter of accommodation and customer good will to gratuitously undertake and perform repairs to the gel coat finish. This work will be done at no cost to your husband and will consist of the following:

Post Marine will inspect the entire vessel to determine the extent of the gel coat repairs to be performed. The areas affected will be treated in the following manner.

1. The engine room will be isolated by sealing the exhausts at the transom, sealing the hull side intake vents, sealing the cockpit hatches and engine room door.

Ms. Kane
Page 2
August 25, 2004

Re: Post Marine/Todd Hamilton

2. Bottom paint will be removed and the bottom will be inspected to locate any areas of gel coat cracking.
3. Topsides and hull sides will be covered prior to bottom sanding, the bottom will be sanded to remove gel coat in areas of cracking. Any hardware affected by stress cracking will be removed and reinstalled.
4. Epoxy barrier coatings will be applied within manufacturer specifications. Two coats of bottom paint will then be applied.
5. All necessary hardware will be removed and reinstalled to facilitate gel coat removal.
6. Gel coat will be sanded off using random orbital sanders, laminate will be inspected, and prepared for reapplication of gel coat.
7. The vessel will be taped off and covered in appropriate areas in preparation for spraying gel coat to proper specifications.
8. Once gel coat has been sprayed, it will be sanded to a 1200 grit finish in preparation for polishing.
9. Polishing will be completed and a coat of fiberglass gel coat resin cleaner-sealer will be applied.

Prior to delivery, the boat will be cleaned as we clean all new boats for customer pickup. Post Marine will make every attempt to complete these repairs in a timely manner and estimate the process will take approximately four months upon receipt of the vessel at our facility.

These repairs are made as an accommodation only and no warranty will be provided other than a 90 warranty of workmanlike performance which will cover only the workmanship of the application of the gel coat. No warranty will be extended with respect to the gel coat, its characteristics, color or finish.

Very truly yours,



Michel O. Weisz

EXHIBIT

F



100 Post Road • Mays Landing, NJ 08330-1698 • (609) 825-2434 • Fax: (609) 825-2336 • www.postyachts.com

Todd Hamilton
Via FAX: 617-333-3203

Dear Mr. Hamilton:

To clarify the letter sent to you from Michel Weisz. In making the repairs to your boat we will spray gelcoat in such a way as to eliminate any spotting or color variation in the areas to be repaired. Gelcoat will be removed from entire surfaces, example being shelter sides, cockpit, forward deck, side decks, pulpit and hull to ensure consistency.

Sincerely,

Joseph Martorana
Vice President

Exhibit F

EXHIBIT

G

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 BOSTON DIVISION
4 C.A. NO. 05-11682 MLW
5

6 L & T YACHT SALES, INC., :
7 Plaintiff, :
8 -vs- :
9 POST MARINE CO., INC., :
10 Defendant. :
11 - - - - -
12
13

14 DEPOSITION OF: CORTEZ MARKS
15 WEDNESDAY, APRIL 11, 2007
16
17
18
19

20 Atlantic City Court Reporting, LLC.
21 Certified Shorthand Reporters & Videographers
22 1125 Atlantic Avenue - Suite 416
23 Atlantic City, New Jersey 08401
24 (609) 345-8448
25 www.accourtreporting.com

1 Deposition of CORTEZ MARKS, taken in the
2 above-entitled matter before Betty Ann Wasilewski, a
3 Certified Shorthand Reporter, License No. XI01032,
4 Registered Professional Reporter, Certificate of Merit
5 Holder and Notary Public of the State of New Jersey,
6 taken at the offices of ATLANTIC CITY COURT REPORTING,
7 LLC., 1125 Atlantic Avenue, Suite 416, Atlantic City,
8 New Jersey 08401, on Wednesday, April 11, 2007,
9 commencing at 3:20 p.m.

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1 A P P E A R A N C E S:

2
3 CARMICHAEL & ZAJAC, P.C.

4 BY: JOHN E. ZAJAC, ESQ.

5 170 High Street

6 Taunton, Massachusetts 02780

7 (508) 821-2552

8 For the Plaintiff.

9
10 SEGREDO & WEISZ

11 BY: MICHEL O. WEISZ, ESQ.

12 9350 South Dixie Highway

13 Suite 1500

14 Miami, Florida 33156

15 (305) 670-3820

16 For the Defendant.

17
18 ALSO PRESENT:

19 Todd Hamilton

(MARKS - ZAJAC)

1 C O R T E Z M A R K S,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ZAJAC:

5 Q. Good afternoon, Mr. Marks.

6 A. Good afternoon.

7 Q. How are you?

8 A. Very well. Thank you.

9 Q. My name is John Zajac, and I represent
10 L & T Yacht Sales, Incorporated in a lawsuit in the
11 Federal District Court in Massachusetts against Post
12 Marine Company.

13 We're here today to take your
14 deposition. Have you ever given a deposition before?

15 A. Yes.

16 Q. Once or more than once?

17 A. Once.

18 Q. I'm going to assume that you probably
19 know the ground rules, but I'll restate them briefly
20 for you. I'm going to ask you questions and you're
21 going to answer them. Someone is going to record
22 your -- my questions and your testimony, and to
23 prepare an accurate record of that, it's important
24 that you answer questions verbally, not by nodding
25 your head, not by saying uh-huh or uh-uh, because that

(MARKS - ZAJAC)

1 sides of the boat?

2 A. Yes. As I remember, there might have
3 been either three or four cracks on the port side, and
4 maybe a couple small ones on the starboard side.

5 Q. And were those repaired?

6 A. Yes.

7 Q. What was the process of repairs that
8 were done to Mr. Hamilton's boat?

9 A. Well, that was ground out. The cracks
10 were ground out and filled with a filler, and then it
11 was sanded and sprayed and sanded out.

12 Q. Do you recall which gel coat Post used
13 to repair Mr. Hamilton's boat, the 953 or
14 Interplastic's or both?

15 A. I can't remember which one they used at
16 this time.

17 Q. Was there a period of time that Post was
18 using the 953 because the color blended well over --

19 A. Yes.

20 Q. -- 953?

21 A. Yes.

22 Q. And does Interplastic's blend less well
23 from a coloring standpoint?

24 A. Well, the two -- the two may not look
25 exactly the same if you patch with it. You'd have a

(MARKS - ZAJAC)

1 and he wasn't pleased.

2 Q. Did he have any specific complaints that
3 you recall?

4 A. I can't remember.

5 Q. Do you remember anything that you said
6 to him?

7 A. I can't remember.

8 Q. Besides using Interplastic's gel coat
9 instead of 953 gel coat, has anything changed in the
10 way that Post has been fixing cracked gel coat since
11 the problem arose?

12 A. We tried to sand the gel coat off more
13 aggressively than we did in the past.

14 Q. What do you mean by that?

15 A. Well, if there's an area where there's
16 cracks, we try to sand it down as close to the
17 laminate as we can.

18 Q. And how does that differ from the way
19 you had previously been repairing it?

20 A. Well, previously, we tried to repair the
21 cracks, and refinish it after we repaired the cracks.

22 Q. Which way was Mr. Hamilton's boat
23 repaired, if you recall?

24 A. We filled the cracks and sprayed over
25 the cracks.

(MARKS - ZAJAC)

1 Q. So it wasn't the aggressive sanding
2 that's now being done?

3 A. No, no.

4 Q. Because of the repairs that Post has had
5 to do, has it been required to purchase any equipment
6 to do those repairs?

7 A. No, other than just the regular tools
8 like sanders, or grinders, or whatever it may be.

9 Q. Can gel coat be applied over gel coat?

10 A. Yes.

11 Q. Is there any danger in applying new gel
12 coat over potentially defective 953 gel coat?

13 A. That, I don't know.

14 Q. With regard to the hull of Mr.
15 Hamilton's boat, was the hull stripped?

16 A. No.

17 Q. Was any of the gel coat stripped from
18 the hull?

19 A. No.

20 Q. Was the bottom of the boat stripped?

21 A. No.

22 Q. Was any gel coat removed from the bottom
23 of the boat?

24 A. No.

25 Q. Was the stern stripped?

(MARKS - ZAJAC)

- 1 A. I can't remember whether it was or not.
- 2 Q. Was the cockpit area stripped?
- 3 A. I believe the cockpit may have been
- 4 stripped.
- 5 Q. Was the freezer area stripped?
- 6 A. I'm not sure. I don't remember.
- 7 Q. Was the back bulkhead stripped?
- 8 A. I don't remember that.
- 9 Q. Was the front deck stripped?
- 10 A. Front deck was.
- 11 Q. Was the front of the salon stripped?
- 12 A. The front of the salon? What is the
- 13 front of the salon?
- 14 Q. Where the seat is in the front of the
- 15 boat.
- 16 A. The windshield was stripped. The front
- 17 seat, I recall that wasn't stripped at the time.
- 18 Q. Was the bridge stripped?
- 19 A. I -- I'm not sure. I don't think so.
- 20 Q. How about the bridge floor?
- 21 A. The bridge floor, yes.
- 22 Q. And the dashboard?
- 23 A. That wasn't stripped.
- 24 Q. And the hardtop?
- 25 A. I don't think that was stripped either.